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ELECTRONICALLY FILED
DOC #: _____
DATE FILED: 1/23/19

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

TESSA KNOX, et al.,

X

:

Plaintiffs, : ORDER

-v.-

:

17 Civ. 772 (GWG)

JOHN VARVATOS ENTERPRISES, INC.,

:

Defendant. :

X

GABRIEL W. GORENSTEIN, UNITED STATES MAGISTRATE JUDGE

The Court believes that this case is one of the rare instances in which the parties would benefit from a half-day confidential and non-binding summary jury trial on certain issues prior to a settlement conference, as is described further below. The Court will only conduct the summary jury trial if both sides agree to do so. A telephone conference to discuss this issue shall take place on Friday, January 25, 2019, at 10:30 a.m. The parties must consult with their clients as to the topics raised in this Order before the telephone conference.

At the above date and time, Mr. Dunnegan or other attorney for plaintiff is directed to place a call to the Court at (212) 805-4260 with all parties on the line.¹ When addressing the Court, counsel must not use a speakerphone.

Upon receipt of this order each party is directed to ensure that all other parties on the case are aware of the conference date and time. The parties should follow paragraph 1.F of this Court's Individual Practices (available at: www.nysd.uscourts.gov/judge/Gorenstein) for any request for an adjournment.

Following is the Court's vision of the procedures for the summary jury trial. If the parties prefer other procedures, the Court would likely agree to any changes the parties jointly

¹ If the call is arranged through a commercial communications service, counsel arranging the call may telephone chambers at the time of the conference and inform chambers of the telephone number and access code that may be used to dial into the call. Only a toll-free service should be used.

propose.

Summary of Proposed Procedures for the Summary Jury Trial

The Court would summon approximately 15 jurors. The attorneys would not be involved in the juror selection process. The Court would inform the jurors of the nature of the proceeding and that it is not binding upon the parties. The Court would ask voir dire questions solely relating to bias. If jurors expressed any bias, the Court would eliminate them. The remaining jurors (up to 9) would be seated.

The Court envisions that the summary jury trial would involve the following.

1. The reading to the jury of a written list of facts relating to the clothing allowance, the costs to males and to females to comply with the JV dress policy, and the job duties of male and female sales associates. Many facts will be undisputed but the list may also contain some disputed facts (for example, that some witnesses say that it requires X dollars for females to comply with the clothing allowance, while other witnesses said it requires Y dollars). The list should be as concise as possible. The jurors would be provided with the written list to use in deliberations.
2. Arguments from counsel (of no more than 30 minutes each).
3. Instructions to the jury from the Court as to how deliberations should be conducted and that the jury's task is to answer the questions on the verdict sheet.
4. A verdict sheet with the following questions:
 - A. Do male and female sales associates have jobs requiring equal skill, effort, and responsibility? (Note: to show that women performed equal work to the men, the women need not demonstrate that their jobs are identical to those of the men, but only must show that the two positions are substantially equal in skill, effort, and responsibility.)
 - B. Does JV give compensation (in any form) to male sales associates that is of greater value than the compensation (in any form) given to female sales associates?
 - C. If your answer is "yes," how much more compensation do male sales associates receive than female sales associates?
5. The jury will be given a time limit of one hour to deliberate. They will be encouraged to come to a unanimous verdict. If they are not able to do so, they will be instructed to give their individual votes.

6. Following deliberations and the return of the verdict sheet, the attorneys (with clients/insurers present, if desired) would be permitted to talk to the jurors in the presence of the Court, though the jurors will be instructed that they are free to leave following their verdict. The attorneys and parties will be barred from contacting the jurors after they have been discharged.

The proceedings would not be open to the public, would not be recorded, and would be governed by the strictures of Fed. R. Evid. 408. A decisionmaking representative of the client would be required to attend. For JV, this means the person responsible for giving settlement authority—not someone who has received authority from another person. The same is true for any insurer representative.

The Court's available dates for such a summary jury trial are February 11, February 19, February 28, and March 4, 2019.

The Court would hold a settlement conference either immediately following the verdict or, if the parties prefer, at a later date.

SO ORDERED.

Dated: January 22, 2019
New York, New York



GABRIEL W. GORENSTEIN
United States Magistrate Judge